

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:08-CR-395-FL-1

UNITED STATES OF AMERICA,)
)
)
v.)
)
)
DURWOOD JOSEPH FIELDS,)
)
)
Defendant.)

ORDER

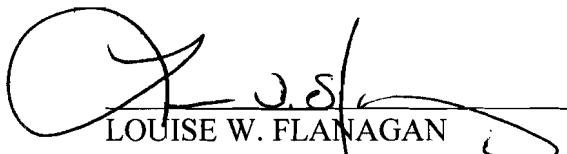
This matter comes before the court on the memorandum and recommendation (“M&R”) of United States Magistrate Judge James E. Gates (DE # 56) and defendant’s motion to suppress statements he made during a custodial interrogation (DE ## 31, 37). After a hearing held on July 16, 2009, and supplemental memoranda filed by the government (DE # 50) and the defendant (DE # 51), Judge Gates entered M&R on August 24, 2009, recommending this court deny defendant’s motion to suppress. The time for objections to the M&R has now passed with no objections filed by either party. The issues raised in the M&R and defendant’s motion to suppress are ripe for ruling.

Defendant challenges the express waiver of his rights under Miranda v. Arizona, 384 U.S. 436 (1966) on the grounds that his heroin use and addiction rendered the waiver ineffective. He initially argued his waiver was both involuntary and not knowing and intelligent, but abandoned his challenge based on voluntariness because there was no evidence of coercive activity on behalf of the police. (Def’s Supp. Mem. 4; M&R 8). Thus, defendant’s only remaining argument was that his waiver was not knowing and intelligent.

After careful review of the record and the facts proposed to be found, the court finds no error and adopts the statement of facts, thoroughly set forth by Judge Gates, as its own. Defendant was

coherent during the interrogation and had the ability to understand the waiver of his Miranda rights. The court agrees with the legal conclusion that defendant's waiver was knowing and intelligent. Accordingly, this court ADOPTS Judge Gates's recommendation that suppression of defendant's statements is not warranted as its own. For the reasons set forth more particularly therein, defendant's motion is DENIED.

SO ORDERED, this the 15 day of September, 2009.



LOUISE W. FLANAGAN
Chief United States District Judge